



December 22, 2020

The Honorable Barbara Moses  
United States Magistrate Judge  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007

**RE: *Kelcey Deptula v. Jonathan Rosen et al.*, 1:20-CV-02371**

**MEMO ENDORSED**

Dear Judge Moses,

Attached is a partial page containing unsolicited and unwelcome, vulgar and pornographic text messages -- sent by Plaintiff to individual Defendant approximately three hours *after* her attorney filed her Response to the Motion to Dismiss -- in which Plaintiff seeks to engage in sexual relations with individual Defendant. This text exchange is referenced in Defendants' Reply Brief in support of their Motion to Dismiss also being filed today. These text messages are part of thousands received by individual Defendant during the pendency of this action. Through this letter motion, Defendants submit this single page of text messages under seal and seek this Court's determination as to whether they should so remain given their pornographic nature, including a sexually explicit image of Plaintiff accompanying her request to engage in sexual relations with individual Defendant.

I've consulted with opposing counsel on whether he believes the text messages should be filed under seal. In response, he stated that he believes that texts are irrelevant and inadmissible hearsay. They are neither. As discussed in Defendants' Reply, statements by opposing parties are *not* hearsay. Fed. R. Evid. 801. The attached admissions of a party opponent are relevant under Fed. R. Evid. 401 as they directly bear on the *Iqbal* analysis this Court must undertake, undermine Plaintiff's claims of wrongdoing and harm, and directly respond to Plaintiff's incredible claim, set forth in her Response to the Motion to Dismiss, that *Defendant* is somehow in the wrong for receiving Plaintiff's unsolicited and unwelcome communications (wherein Plaintiff writes to Defendant: "Hey, Why won't you pick up[?]"). This is but one of many such examples.

Very truly yours,

*/s Robert Steinbuch*

---

Robert Steinbuch  
Attorney for Defendants

Application GRANTED to the extent that Dkt. No. 55-1 shall remain under seal at the present level of restriction. SO ORDERED.

A handwritten signature in blue ink, appearing to read "Barbara Moses", is written over a horizontal line.

Barbara Moses, U.S.M.J.  
December 28, 2020